

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 450 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

M/S. SIDDHPURA ENGINEERING WORKS

Versus

SARDAMAN PRATAPRAI SHETH

Appearance:

Mr.B.G.PATEL for MR AJ PATEL for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/01/98

ORAL JUDGEMENT

1. Respondent No.1 served. Neither he is present nor any advocate represents him. Respondents No.2 & 3 have been deleted.

2. Heard the learned Counsel for the appellant and perused the Judgment of the two Courts below.

3. First Appellate Court has not cared to mention in brief the facts on which the first Appeal arose. Consequently the brief facts essential for disposal of this Appeal are being sorted out from the Judgment of the trial Court.

4. In brief the facts giving rise to this Appeal are:

That the defendants No.2 & 3 representing themselves as partners of defendant No.1 purchased certain goods (sugarcane crushing machin and allied machineries) from the plaintiff. Challan was prepared on 27.3.1969, delivery of goods was effected on 27.8.1969, part payment was made from time to time. The total price of the machineries purchased was Rs.8,590.40 ps. This amount was debited on 9.9.1969. The account books disclosed that a sum of Rs.1,100/- was paid on 14.3.1969, Rs.2500/- paid on 25.3.19069 and Rs.1390/- paid on 13.9.1969 leaving the balance of Rs.3600.40 ps. The suit for recovery of the said amount was filed after serving the notice upon the defendants.

5. The defendants denied their liability. They also pleaded that nothing was due to the plaintiff from them after payment of Rs.1390/- made on 13.9.1969. The plea of limitation was also raised by the defendants with a view to defeat the suit of the plaintiff.

6. The trial Court found that the Suit was within the limitation inasmuch as the letter dated 13.8.1969, Ex.75 containing the acknowledgement of liability and enclosing therewith the draft of Rs.478/- dated 4.8.1969 to be credited towards the account of the defendants extended the period of limitation. The trial Court further found that a sum of Rs.4421/- was due to the plaintiff from the defendants. The decree was passed accordingly together with pendentlite and future interest.

7. Feeling aggrieved the defendants preferred Appeal. The Lower Appellate Court found that defendant No.3 was also a partner of the firm - defendant No.1 and was liable for the amount due to the plaintiff. However, on the point of limitation it differed with the trial Court and held that the Suit was barred by time and the payment made on 13.9.1969 did not extend the period of limitation nor the letter EDx.75. Accordingly the Suit was dismissed and the Appeal was allowed. It is how this Second Appeal comes up for hearing.

8. The Appeal was admitted only on one substantial question of law i.e. whether the Suit is barred by limitation.

9. After hearing the learned Counsel for the appellant and after examining the Judgment of the two Courts below, I am unable to agree with the Lower Appellate Court that the Suit is barred by limitation. The Lower Appellate Court has clearly held under Point No.1 that the defendant No.3 should be held liable for the amount due which means the amount due to the plaintiff. It is not the finding of the lower Appellate Court that nothing remains due to the plaintiff from the defendant after the alleged payment of Rs.1390/- made on 13.9.1969. If this is so then the plaintiff's case that this payment was not made in full and final satisfaction of the claim cannot be lightly brushed aside. It appears from the evidence on record that Challan was made earlier on 27.3.1969 whereas the delivery of machinery was made subsequently after five months on 27.8.1969. Part payments were made before taking the delivery. The payment of Rs.1390/-dated 13.9.1969 was no doubt made after receiving delivery of machinery, but from the evidence on record it cannot be said to be full and final payment. In the letter Ex.75 the liability is acknowledged though the exact amount due has not been acknowledged. In this letter it was mentioned that the Draft of Rs.478/- be accepted and credited to the account of the defendant and receipt be issued. It, therefore, follows that on 4.8.1969 part payment was made. There is nothing substantial on record to believe that the payment of Rs.1300/- made on 13.9.1969 discharged the entire outstanding dues of the defendant. Even the Lower Appellate Court has not accepted that otherwise it would not have been held that defendant No.3 is liable for the amount due to the plaintiff. If this is so then the payment of Rs.1390/- is nothing but part payment and the letter Ex.75 is the letter of acknowledgement of liability. The view to the contrary taken by the lower Appellate Court seems to be erroneous.

10. Section 18 of the Indian Limitation Act provides that where, before expiration of the period prescribed for a suit or application in respect of any property, or right, acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time, when the acknowledgement was so signed.

The letter Exh.75 can be considered to be acknowledgement of liability inasmuch as it is signed by one of the partners of defendant No.1 and is in writing. In this letter also it was not mentioned that the Draft of Rs.478/- was being sent in full and final satisfaction of the claim. Consequently there was implied admission of liability by one of the defendant partners in this letter which amounts to acknowledgement of liability and as such the period of limitation is extended in view of this letter. More over the subsequent payment of Rs.1390/- made on 13.9.1969 also saves the period of limitation. The Suit was filed on 3.4.1978 and computed either from 4.8.1969 or 13.9.1969, the suit which was filed on 3.4.1992 was apparently within limitation and the view of the learned Lower Appellate Court to the contrary cannot be accepted.

11. Since the Lower Court itself has held that the defendant No.3 is liable to pay the dues of the plaintiff and the bar of limitation is removed in view of foregoing discussions, there is no escape, but to allow this Appeal. The Appeal, therefore, succeeds and is allowed. The Judgment and Decree of the lower Appellate Court are set aside and that of the trial Court restored. In the circumstances of the case the appellant shall get half cost of the Appeal from the respondents.

* * * * *

sas